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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO
UNITED STATES OF AMERICA,
Plaintiff,
vs. NO: 15-CR-4268 JB
ANGEL DELEON, et al.

Transcript of excerpt of testimony of
MICHAEL SUTTON
April 30, 2018

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1 THE COURT: All right. Mr. Beck, does the
2 Government have its next witness or evidence?

3 MR. BECK: Yes, Your Honor. The United
4 States calls Michael Sutton.

5 THE COURT: Mr. Sutton, if you'll come up
6 and stand next to the witness box on my right, your
7 left, before you're seated, my courtroom deputy,
8 Ms. Bevel, will swear you in

9 MICHAEL SUTTON,
10 after having been first duly sworn under oath,
11 was questioned, and testified as follows:

12 THE CLERK: Please state your name and
13 spell your last name for the record.

14 THE WITNESS: Michael Sutton, S-U-T-T-O-N.

15 THE COURT: Mr. Sutton.

16 Mr. Beck?

17 MR. BECK: May I have one moment, Your
18 Honor?

19 THE COURT: You may.

20 DIRECT EXAMINATION

21 BY MR. BECK:

22 Q. Good afternoon, Mr. Sutton.

23 A. Yes, sir.

24 Q. Mr. Sutton, do you know a woman named
25 Amber Sutton?

1 A. Yes, I do.

2 Q. How do you know her?

3 A. She's my sister.

4 Q. Go ahead and try and scoot a little closer
5 to that microphone.

6 A. It's my sister.

7 Q. All right. Do you recall what you were
8 doing on the evening of November 12, 2012?

9 A. I was actually sitting at home.

10 Q. And at some point, sitting at home, did
11 you leave your house?

12 A. Yes, I did. I got a phone call from my
13 sister.

14 Q. All right. After that phone call from
15 your sister, what did you do?

16 A. I drove around looking for her car.

17 Q. What happened next?

18 A. I drove around for a little bit. I
19 couldn't find her car. I called her because I had
20 an uneasy feeling about things.

21 Q. All right. Let me stop you there. Did
22 you believe that she had her car?

23 A. No, she told me otherwise.

24 Q. Who were you looking for with her car?

25 A. Adrian Burns.

1 Q. After you drove around for a while and
2 called your sister, what happened next?

3 A. I made a phone call to a friend of mine,
4 that -- I told him if he would go with me to go and
5 look in some other places that I didn't trust,
6 myself, so we went around together.

7 Q. So did you then go and pick up the friend
8 of yours that you called?

9 A. Yes, sir.

10 Q. And where did you two proceed after you
11 picked him up?

12 A. We went towards Trigger Canyon Road, we
13 went up towards the top of the mesa, we drove
14 through town, we went through Los Chavez, and we
15 headed home.

16 Q. All right. And let me stop you there.
17 Let's back up and reorient. Where are you driving
18 around? What part of the state?

19 A. Valencia County.

20 Q. Where -- you went through Los Chavez.
21 Where are those other places, are they around Los
22 Lunas area, Belen area, where are they?

23 A. Belen area, Rio Communities.

24 Q. At some point when you were driving
25 around, did you and your friend encounter Joe

1 Lawrence Gallegos and Andrew Gallegos?

2 A. Yes, sir.

3 Q. Where was that?

4 A. At Allsup's.

5 Q. I'm going to show you what's been admitted
6 as Government's Exhibit 892, and there is a screen
7 right there to your left, Mr. Sutton.

8 Do you recognize what's depicted in this
9 photograph?

10 A. The Allsup's on Highway 47.

11 Q. Is that the Allsup's where -- on the night
12 of November 12, 2012, you encountered Joe Lawrence
13 Gallegos and Andrew Gallegos?

14 A. Yes, sir.

15 Q. I'm going to show you Government's Exhibit
16 893.

17 Is that another view of the same Allsup's
18 store?

19 A. Yes, sir.

20 Q. And Government's Exhibit 894, please.

21 Do you recognize this as a satellite view
22 of that Allsup's convenience store?

23 A. Yes.

24 Q. When you encountered Joe Lawrence and
25 Andrew Gallegos, where were they, and where were

1 you, on Government's Exhibit 894?

2 A. On 894 they were parked at the Allsup's.
3 I mean, you can't really see it in your picture.

4 Q. Okay. Let's go back to 892. That might
5 be a little better.

6 A. Okay. They were parked at the front pump
7 where that --

8 Q. If you want, can you actually go ahead and
9 touch your screen, and you can draw on it.

10 A. They were parked right there, where I
11 circled.

12 Q. Okay. So under the Alon cover --

13 A. Yes.

14 Q. -- they were parked there, where it looks
15 like the black old car is parked on?

16 A. Yes.

17 Q. And where did you park?

18 A. I parked over there, right there.

19 Q. I'm going to circle the red vehicle; is
20 that where you parked your car?

21 A. Yes, sir.

22 Q. What were you driving, and what were they
23 driving?

24 A. I was in a Ford Expedition, and they were
25 in a white Chevy flatbed.

1 MR. BECK: Your Honor -- well, hold one
2 second.

3 Your Honor, at this time the United States
4 will move, I believe without objection, for the
5 admission of Government's Exhibit 886, 887, 431,
6 449, 526, 743, and 836.

7 THE COURT: Any objections from the
8 defendants on those? Not seeing or hearing any
9 objection, Government's Exhibits 886, 887, 431, 449,
10 526, 743 and 836 will be admitted into evidence.

11 (Government Exhibits 886, 887, 431, 449,
12 526, 743, 836 admitted.)

13 BY MR. BECK:

14 Q. What did the truck that Joe Lawrence and
15 Andrew were driving look like?

16 A. A white single cab flat bed, had an orange
17 light on the top of it.

18 Q. And when you encountered them, were they
19 inside the truck, both of them, was one inside,
20 outside, where were they?

21 A. One was in the parking lot and one was in
22 the store.

23 Q. All right. Do you know which one was in
24 the parking lot and which was in the store?

25 A. One was -- Smiley was coming out of

1 Allsup's, and the other one was inside Allsup's.

2 Q. So when you encountered them -- did you
3 say Smiley was --

4 A. Yes.

5 Q. Where was he?

6 A. He was in the parking lot, walking out.

7 Q. And you pointed to identify Smiley. Where
8 is the person that you know as Smiley?

9 A. Over there.

10 MR. BECK: Let the record reflect the
11 identification of Andrew Gallegos.

12 THE COURT: The record will so reflect.

13 BY MR. BECK:

14 Q. And where was the other Gallegos?

15 A. Inside the store.

16 Q. And do you know his name?

17 A. Yes.

18 Q. And what is his name?

19 A. Joe Lawrence.

20 Q. And just try to stay a little bit close to
21 that mic, it's a little hard to hear you, please,
22 Mr. Sutton.

23 I'm going to show you Government's Exhibit
24 886.

25 A. That's the truck they were in.

1 Q. Is that the truck you saw them driving
2 that night?

3 A. Yes.

4 Q. And by that, I mean, is it this first
5 truck here, in Exhibit 886, with the orange light on
6 top?

7 A. The first one, yes.

8 Q. Then I'll show you Government's Exhibit
9 431.

10 A. Same vehicle.

11 Q. Is it that vehicle on the back left?

12 A. Yes.

13 Q. And then I'll show you Government's
14 Exhibit -- well, let me ask you first: When you saw
15 the truck on the night of November 12, 2012, did you
16 notice anything in the back of the truck?

17 A. There was a couple of spare tires and a
18 gas can.

19 Q. I'm going to show you Government's Exhibit
20 449.

21 Are those the spare tires and the gas can
22 that you saw on the back of the truck that night?

23 A. I can't -- spare tires, yes, but exact
24 tires, I couldn't tell you.

25 Q. Okay. And then Government's Exhibit 743.

1 Is that how, from your view, is that how
2 the back of the truck that the Gallegos brothers
3 were driving on November 12 appeared to you?

4 A. Yes.

5 Q. And if we could go back to Exhibit 892.

6 When you parked the truck where the red
7 car is, and the Gallegos' truck was parked where
8 that blue car is -- excuse me, the black car, what
9 happened?

10 A. The person that was with me got out of the
11 vehicle and went to speak to them.

12 Q. And who was person that was with you?

13 A. Leroy Vallejos.

14 Q. What did you do while Leroy Vallejos was
15 talking to them?

16 A. I sat in my truck.

17 Q. And what did you observe from where you
18 were sitting in your truck?

19 A. I seen them talking for a few minutes. I
20 observed the other brother coming out of the gas
21 station with a 12-pack of beer and some tissue, and
22 they talked for a minute.

23 Leroy was handed a pack of cigarettes,
24 from what I could see from where I was sitting. He
25 got back in the truck, and he was real quiet, and I

1 told him, "What's up?"

2 MS. TORRACO: Objection, if it's going to
3 elicit hearsay.

4 THE COURT: I think it's okay so far.

5 MR. BECK: Yeah.

6 THE COURT: Sustained -- I mean overruled.

7 A. I asked him what was up.

8 MS. TORRACO: Objection, if he says what
9 Leroy responded, it's hearsay.

10 THE COURT: Well, but I think we're
11 waiting for another question.

12 MR. BECK: Yes. I anticipate --

13 BY MR. BECK:

14 Q. Let me ask you when you asked him, "What's
15 up?" did he then not -- did he then give you an
16 order about where to go next?

17 A. Yes.

18 MS. TORRACO: Objection. Still hearsay.
19 It's going to be relying on hearsay.

20 THE COURT: Well, lead him, here. If it's
21 an order, I'm probably inclined to overrule.

22 BY MR. BECK:

23 Q. When you asked Mr. Vallejos, "What's up?"
24 did he respond back to you, "Just go home"?

25 A. Yeah, he told me we need to go home.

1 Q. What time of day was this when you
2 encountered the Gallegos brothers on November 12?

3 A. Between 9:30 and 11:30, I want to say.

4 Q. When Mr. Vallejos got in the truck and
5 told you to just go home, did he appear different,
6 in terms of his mannerisms? How did he appear to
7 you?

8 A. He presented himself very uneasy.

9 Q. Did he show you anything when he got back?

10 A. No, I seen what was in his hand.

11 Q. And what did you see in his hand?

12 A. He had heroin in his hand, and he had some
13 money, and like I said, the pack of cigarettes.

14 Q. How did Mr. Vallejos act -- well, let me
15 ask this first question first: What did you do
16 then?

17 A. I started the vehicle and we proceeded to
18 drive home.

19 Q. And where did you go?

20 A. I dropped him off at his place and I went
21 home.

22 Q. Did Mr. Vallejos act differently after he
23 encountered the Vallejos (sic) brothers --

24 MS. TORRACO: Objection.

25 BY MR. BECK:

1 Q. -- than he did before, in your opinion?

2 MR. BENJAMIN: Objection, speculation.

3 THE COURT: Well, hold on. I think you
4 need to rephrase the sentence. You said the
5 Vallejos brothers, so why don't you reframe, and
6 let's try it again.

7 BY MR. BECK:

8 Q. Did Mr. Vallejos act differently to you
9 after he encountered the Gallegos brothers --

10 A. Yes.

11 Q. -- than he did before?

12 A. Yes.

13 Q. How did he act differently?

14 A. He was very quiet.

15 Q. After you dropped off Mr. Vallejos and
16 went back to your house, did you then talk to your
17 sister, Amber Sutton, that night?

18 A. Yeah.

19 Q. Did you talk to her about the way that Mr.
20 Vallejos; heroin was packaged that he received from
21 the Gallegos brothers?

22 MS. TORRACO: Objection, leading.

23 THE COURT: Overruled.

24 A. Yes, I asked.

25 BY MR. BECK:

1 Q. Don't tell me what you asked her, I just
2 want to know, did you talk about the package of the
3 drugs Mr. Vallejos had?

4 A. Yes.

5 Q. After that conversation with her, did you
6 believe that --

7 MS. TORRACO: Objection, leading.

8 THE COURT: Overruled. Let's see what the
9 question is first.

10 BY MR. BECK:

11 Q. After that conversation with her, what did
12 you believe about the packaging of the drugs Mr.
13 Vallejos had?

14 MR. BENJAMIN: Objection, lack of personal
15 knowledge, Your Honor, or foundation.

16 THE COURT: Overruled.

17 A. After I spoke to her, they had something
18 that belonged to Adrian, or came from his -- came in
19 a manner, I would say.

20 BY MR. BECK:

21 Q. Okay. And I'm not sure that -- I didn't
22 catch that, I'm judging by Ms. Bean's face, she
23 caught it better than I did, but she did not get the
24 whole thing, so after you spoke with your sister,
25 Amber Sutton, about the way that Mr. Vallejos' drugs

1 were packaged, what did you believe about where
2 those drugs came from?

3 A. From Adrian.

4 Q. And is that Adrian Burns?

5 A. Yes.

6 Q. When you saw Joe Lawrence Gallegos coming
7 out of that store, coming out of the Allsup's that
8 night, what was he wearing?

9 A. The shirt, I cannot recall, but the pants
10 were some blue navy -- like exercise pants, I guess
11 you would say. They would be like workout pants.

12 Q. I'm going to show you what's been admitted
13 as Government's Exhibit 526.

14 Do you recognize those pants, Mr. Sutton?

15 A. Yes.

16 Q. How do you recognize them?

17 A. Just the pants -- the material of the
18 pants -- exercise pants, my kids wear them all the
19 the time.

20 Q. All right. Are those the pants that -- do
21 you believe those are the pants that you saw Mr. Joe
22 Gallegos wearing on the night of November 12?

23 A. Yes.

24 Q. I'm going to show you Government's Exhibit
25 836.

1 Are those the same pants that you observed
2 Mr. Joe Gallegos wearing on the night of November
3 12?

4 A. Appears to be, yes.

5 MR. BECK: May I have a moment, Your
6 Honor?

7 THE COURT: You may.

8 BY MR. BECK:

9 Q. Mr. Sutton, when you were out driving
10 around with Leroy Vallejos, did he also know that
11 you were looking for Adrian Burns?

12 A. Yes.

13 Q. Have you interacted with Joe Lawrence
14 Gallegos and Smiley, or Andrew Gallegos, over the
15 years?

16 A. No.

17 MR. BECK: No further questions, Your
18 Honor.

19 THE COURT: Thank you, Mr. Beck.

20 Ms. Torraco, do you have cross-examination
21 of Mr. Sutton?

22 MS. TORRACO: Yes, Your Honor, thank you.

23 CROSS EXAMINATION

24 BY MS. TORRACO:

25 Q. Good afternoon.

1 A. Good afternoon.

2 Q. How are you?

3 A. I've been better.

4 Q. Good. I've been better, too.

5 I'm a little confused about your
6 relationship with Amber Sutton. Do you two have the
7 same mother and father?

8 A. Same mother, different fathers.

9 Q. Okay, so you're half -- half brother,
10 sister?

11 A. Basically, yes.

12 Q. What does "basically" mean?

13 A. It means we've got the same mother,
14 different fathers.

15 Q. Okay. So you're half brother and sister?

16 A. If that's what you want to call it.

17 Q. I don't necessarily want to call it
18 anything, I'm just trying to clear up what the
19 relationship is.

20 A. I don't call her my half sister; I call
21 her my sister.

22 Q. Okay. So were you guys raised in the same
23 home?

24 A. Yes.

25 Q. Okay. Because there -- okay. So let's

1 start with -- you're not sure if you saw the
2 Gallegos brothers between -- at 9:30 and 10:00, or
3 10:30 and 11:00, or 11:00 to 11:30; correct?

4 A. Right. It was a timeframe I was out and
5 about, and my sister was calling me, freaking out.
6 The time -- like I said before, I can't be positive
7 on the time.

8 Q. Okay. So you were with Leroy Vallejos
9 that night; right?

10 A. Yes.

11 Q. And he's the only person that you were
12 with that night?

13 A. Yep.

14 Q. And the only person that can vouch for
15 what you did that night is Leroy Vallejos; correct?

16 A. Yes.

17 Q. And the two of you were just driving all
18 around the town; correct?

19 A. (Witness nods head.)

20 Q. Then at some point, you come to Allsup's;
21 is that correct?

22 A. Yes.

23 Q. And at Allsup's, you saw Joe inside the
24 store. Were you guys there first, and then the
25 Gallegos brothers pulled up?

1 A. No, they were there first.

2 Q. They were there first. And Joe was inside
3 the store and Andrew was in the vehicle?

4 A. He was walking back to the vehicle.

5 Q. Okay. So they both had been in the store?

6 A. I'm assuming so.

7 Q. Okay. And Andrew got in the vehicle
8 first; is that correct?

9 A. On his way, he talked to Leroy.

10 Q. Okay. So was it the three of them that
11 got together to talk?

12 A. One walked up, talked for a second, walked
13 to the vehicle after.

14 Q. One walked up, talked --

15 A. Adrian -- I mean, Leroy and Andrew were
16 standing outside talking, and Joe Lawrence walked
17 out of the store, walked to the vehicle. And the
18 other one walked to the vehicle. We got in my
19 truck, and I went home.

20 Q. Okay. And you said that somebody was
21 carrying toilet paper?

22 A. Toilet paper and a 12-pack of beer -- 12
23 pack of Bud light, if you want to be precise.

24 Q. And they gave Adrian cigarettes?

25 A. Not Adrian.

1 Q. I'm sorry, not Adrian. They gave Leroy
2 cigarettes?

3 A. What appeared to be cigarettes, yes.

4 Q. I'm sorry?

5 A. What appeared to be cigarettes, yes.

6 Q. So you didn't get out and go talk to the
7 Gallegos brothers; correct?

8 A. No.

9 Q. And you didn't have any interaction with
10 them; correct?

11 A. (Witness shakes head.)

12 Q. But the fact is that Amber supposedly was
13 freaking out, and you supposedly were looking for
14 Adrian, but you didn't go up to ask the Gallegos
15 brothers if they had seen him; isn't that true?

16 A. Right.

17 Q. And you knew that Adrian knew the Gallegos
18 brothers; isn't that true?

19 A. Yeah.

20 Q. And you knew that Adrian sold the Gallegos
21 brothers drugs; isn't that true?

22 A. No.

23 Q. You didn't know that?

24 A. No.

25 Q. Well, you knew Adrian sold drugs; correct?

1 A. To an extent.

2 Q. To an extent you knew, or he sold drugs,
3 to an extent?

4 A. I knew to an extent he sold drugs.

5 Q. Okay. Well, you knew he sold heroin,
6 right?

7 A. To an extent.

8 Q. Okay. What is "to an extent" mean?

9 A. I knew a little bit. I've heard about it.

10 Q. Okay. And isn't it true that you know
11 that Amber was with him on many drug deals; isn't
12 that true?

13 A. No.

14 Q. And you knew that Amber was -- you didn't
15 know that Amber was involved in these drug deals?

16 A. No.

17 Q. Okay. And so you watched as the Gallegos
18 brothers came out, and as they talked to Leroy, and
19 you never once got out and asked them, "Do you know
20 where Adrian is?"

21 A. No, because I don't associate with them.

22 Q. I'm sorry?

23 A. No, because I don't associate with them.

24 Q. Okay. Well, if you're concerned, and
25 you're looking for Adrian, it seems to me like you

1 would ask everyone. Is that not how you felt?

2 A. No.

3 Q. Okay. So instead, you just drove around
4 looking for his car; is that what you did?

5 A. Yeah.

6 Q. Now, the night that this happened, you
7 didn't see blood on those blue pants; isn't that
8 true?

9 A. Not from where I was, no.

10 Q. You just saw -- or you're representing
11 that you saw blue pants, that's all?

12 A. Yes.

13 Q. And you can't be certain that those were
14 the same pants; isn't that true?

15 A. They look familiar in the pictures.

16 Q. Okay. And you actually did not like
17 Adrian; isn't that true?

18 A. I've never associated with him to like him
19 or not like him.

20 Q. Well, isn't it your sister's -- isn't this
21 your sister's partner?

22 A. Yeah.

23 Q. Is it your sister's husband or boyfriend?

24 A. Boyfriend.

25 Q. And isn't it true that there were

1 sometimes that you were upset with how he treated
2 her?

3 A. No.

4 Q. No?

5 A. No.

6 Q. You thought that he treated her well?

7 A. I don't get in their relationship.

8 Q. Isn't it true that you didn't like Adrian
9 Burns because of the way he treated your sister?

10 A. To an extent.

11 Q. And isn't it true that you know that she
12 left him more than once?

13 A. They had their typical arguments, like any
14 other couples do.

15 Q. Well, if you don't know what their
16 arguments are, how do you know they were typical?

17 A. Because my sister would tell me.

18 Q. Okay. I thought you said you didn't know
19 what their problems were?

20 A. I don't. She just told me, you know, we
21 had an argument, whatever; he left to his mom's
22 house. The next morning he'd be back, so it can't
23 be that bad.

24 Q. Okay. And isn't it true that for
25 sometimes it would be more than just one night that

1 he would leave, or that she would leave him?

2 A. Not that I know of, no.

3 Q. You don't know of any times when she left
4 him for a longer period of time?

5 A. No.

6 Q. Did you ever encourage her to leave him?

7 A. No.

8 Q. Isn't it true that you, in fact, did
9 encourage her to leave him, and got a police officer
10 involved?

11 A. No.

12 MS. TORRACO: That's all the questions I
13 have. Thank you.

14 THE COURT: Thank you, Ms. Torraco.

15 Anybody else have any defendants have any
16 other cross-examination?

17 MR. BENJAMIN: I do, Your Honor.

18 THE COURT: Mr. Benjamin?

19 CROSS-EXAMINATION

20 BY MR. BENJAMIN:

21 Q. Good afternoon, sir. I apologize --

22 A. Good afternoon.

23 Q. -- I could barely hear you back there. We
24 just need you to sit forward, because otherwise,
25 we're reading lips, and I'm not real good at that.

1 Do you remember talking to the New Mexico
2 State Police on November 13?

3 A. Yeah, I do.

4 Q. Okay. And that was essentially about what
5 happened at Allsup's; right?

6 A. Right.

7 Q. Because what happened at Allsup's, and
8 what we've heard today, is the extent of your
9 involvement --

10 A. Right.

11 Q. -- in this case.

12 A. Yes, sir.

13 Q. And when you talked to the New Mexico
14 State Police on November 13, you never mentioned
15 that you were looking for Adrian Burns -- or you
16 were outlooking for Adrian Burns?

17 A. I told them I was out looking for my
18 sister's car.

19 Q. Okay. Do you remember telling them that?

20 A. Yeah.

21 Q. Okay. So if that's not in the report,
22 that would be a mistake?

23 A. I don't see why it wouldn't be. I told
24 them I was out looking for my sister's car. He was
25 the last person in her car, so why wouldn't I be

1 looking for it?

2 Q. Well, because, you know, until about April
3 22nd, we had never heard that you were going -- that
4 you were out looking for her. We understood you had
5 bumped -- you and Leroy had bumped into Joe and
6 Andrew at the Allsup's, randomly.

7 A. I wouldn't have been out that late. I'm
8 not out and about.

9 Q. Okay. And that first statement, how did
10 you refer to Leroy when you talked to the New Mexico
11 State Police?

12 A. What do you mean, how did I refer to him?

13 Q. Did you -- do you remember telling the New
14 Mexico State Police that you were out with Leroy
15 Vallejos?

16 A. No, I told them I was out with a friend.

17 Q. Right. And they pressed you on that;
18 right?

19 A. Yeah.

20 Q. And you wouldn't tell them who the friend
21 was?

22 A. Not right away, no.

23 Q. Okay. Well, not that day?

24 A. No.

25 Q. And later on they recontacted you, and you

1 told them it was Leroy Vallejos; right?

2 A. Right.

3 Q. Okay. So that day, during that recorded
4 interview, you never mentioned that Amber had called
5 you and asked you to go look for Adrian.

6 A. I don't see why I didn't, but that's why I
7 was out and about.

8 Q. Okay. But -- and I apologize, that's kind
9 of like hedging it, but during that tape-recorded
10 interview, you never mentioned that you were out
11 looking for Adrian or that your sister had called
12 you?

13 A. I don't see why I wouldn't have. I told
14 them. They asked me why I got the phone call, so
15 why wouldn't I be out?

16 Q. Who asked you why you got a phone call?

17 A. Who asked me why I got a phone call?

18 Q. Yes.

19 A. When I told them why I was out and about,
20 and I told them because I got a phone call from my
21 sister.

22 Q. Now, some things are important and some
23 things aren't important; can we agree on that?

24 A. Right.

25 Q. Whether Joe bought beer or whether Joe

1 bought beer and toilet paper, is probably not
2 important in and of itself; is that fair?

3 A. Okay.

4 Q. Okay. Sir, I'm going to have to ask you
5 to lean forward.

6 A. Okay.

7 Q. Okay. I'm not trying to frustrate you. I
8 have to hear you. But when the police are trying to
9 put something together, it's important for them to
10 accurately record what you told them; right?

11 A. Okay. Can I see my statement, then?

12 MR. BENJAMIN: May I approach, Your Honor?

13 THE COURT: You may.

14 BY MR. BENJAMIN:

15 Q. I'm going to ask you not to drop the hard
16 drive, but it's something that happened earlier.

17 You can see where it says "Interview"?

18 THE COURT: Why don't you do this? Why
19 don't you show him the document, and we'll let
20 everybody take their afternoon break. So we'll be
21 in recess for about 15 minutes.

22 All rise.

23 (The jury left the courtroom.)

24 THE COURT: All right. We'll be in recess
25 for about 15 minutes.

1 (The Court stood in recess.)

2 THE COURT: All right. I think I now have
3 an attorney -- and each defendant has an attorney
4 for each defendant. Go ahead and line them up.

5 Did you have something? Mr. Beck?

6 MR. BECK: It's fine, Your Honor.

7 THE COURT: Okay.

8 MR. BECK: We worked it out.

9 THE COURT: All right. Does the
10 Government have anything it needs to raise before we
11 bring the jury in?

12 How about the defendants? Anybody need to
13 raise anything?

14 MR. BENJAMIN: No, Your Honor..

15 (The jury entered the courtroom.)

16 THE COURT: Mr. Sutton, I'll remind you
17 that you're still under oath.

18 Mr. Benjamin, if you wish to continue your
19 cross-examination of Mr. Sutton, you may do so at
20 this time.

21 MR. BENJAMIN: Thank you, Your Honor.

22 BY MR. BENJAMIN:

23 Q. And over the break, you reviewed both of
24 your statements; is that correct?

25 A. Yes, sir.

1 Q. Okay. And I think -- did you see what you
2 were expecting to find in there?

3 A. No, I did not, actually.

4 Q. And did that surprise you?

5 A. Kind of, yeah.

6 Q. Okay. Because your position is you told
7 that to the detective?

8 A. Right.

9 Q. Okay. And in your position, was that
10 something important that you told the detective?

11 A. Yeah.

12 Q. And --

13 A. No, I got you.

14 Q. I'm just asking you to sit forward. I
15 appreciate that, sir.

16 Okay. Do you know -- let me clarify this:
17 In 2012, you weren't using heroin or drugs; correct?

18 A. No, sir.

19 Q. Leroy Vallejos was?

20 A. Yes.

21 Q. Okay. And Joe Gallegos was using heroin;
22 correct?

23 A. Yes.

24 Q. And you know that personally?

25 A. Not personally, no.

1 Q. I apologize, I should have asked the
2 second question first. And Adrian Burns was selling
3 heroin?

4 A. As far as I know.

5 Q. I think your testimony was that Leroy came
6 back after talking to Joe, got in the car, and then
7 he drove off, and he said he had some heroin?

8 A. Yeah, he was looking at it, yes.

9 Q. Okay. Did you ever see him use that
10 heroin?

11 A. No.

12 Q. Okay. Did you ever call him -- and the
13 police contacted you, essentially that very next
14 day; right?

15 A. More or less, yes.

16 Q. If the report says November 13, that was
17 the next day; right?

18 A. Yeah.

19 Q. Okay. And did you call Leroy to ask him
20 for that heroin when you were asked about it?

21 A. No, I did not.

22 Q. Did you ever help the New Mexico State
23 Police recover any of that heroin?

24 A. No.

25 Q. Okay. Why didn't you tell the officer

1 that day who your friend was -- on November 13?

2 A. I just didn't.

3 Q. You'd agree with me that the way the
4 statement is put in the report, it makes it sound
5 fairly insistent that you're not going to disclose
6 who that person is?

7 A. At first, yes, I did.

8 Q. Okay. What was the harm in telling him
9 who Leroy was?

10 A. Because he's not a perfect person.

11 Q. Okay. But he hadn't done anything wrong
12 that night?

13 A. No.

14 Q. And there was no harm in providing -- the
15 officers were asking about whether or not he was a
16 witness; right?

17 A. Yes, they did ask that.

18 Q. And whether or not he's a witness was
19 something that they were trying hard to find out?

20 A. Right.

21 Q. And it took them a couple of days to
22 figure out who your friend -- or who Leroy Vallejos
23 was?

24 A. Right.

25 Q. Okay. And you don't use heroin, so you

1 don't know how heroin is normally packaged; is that
2 fair?

3 A. Right.

4 Q. And I think this is what got us started on
5 the statements, but do you remember seeing Joe
6 carrying beer and toilet paper?

7 A. Yes.

8 Q. Okay. And you'd agree that
9 five-and-a-half years ago, what we remember can be
10 colored by a lot of things?

11 A. Yes.

12 MR. BENJAMIN: May I have one second, Your
13 Honor?

14 THE COURT: You may.

15 MR. BENJAMIN: Pass the witness, Your
16 Honor.

17 THE COURT: Thank you, Mr. Benjamin. Any
18 other defendant have any cross-examination of Mr.
19 Sutton?

20 Mr. Beck, do you have redirect of Mr.
21 Sutton?

22 MR. BECK: I do, Your Honor.

23 THE COURT: Mr. Beck?

24 REDIRECT EXAMINATION

25 BY MR. BECK:

1 Q. Mr. Sutton, I think Ms. Torracco asked you
2 about what time you saw the Gallegos brothers on the
3 night of November 12. Do you remember that
4 questioning? And is it fair to say that I think,
5 sitting here five-and-a-half years later, you can't
6 remember the timing exactly?

7 A. Yeah, the timing exactly, no.

8 Q. Did you tell it to the New Mexico State
9 Police officers who you talked to on May 13 --
10 excuse me, November 13?

11 A. I gave a pretty big window, yes.

12 Q. All right. Did you also tell that New
13 Mexico State Police officer -- and I think you were
14 asked this by Mr. Benjamin just now -- on November
15 13, did you tell him that you went out looking for
16 Adrian Burns, based on what your sister told you?

17 A. Right.

18 Q. Do you remember exactly what you said in
19 that conversation?

20 A. No, I do not.

21 Q. Would it help refresh your recollection if
22 you listened to the recording of that conversation?

23 A. Possibly.

24 MR. BENJAMIN: Objection, Your Honor.

25 THE COURT: Why don't y'all approach and

1 tell me what you're trying to do here?

2 (The following proceedings were held at
3 the bench.)

4 THE COURT: What is it you're wanting him
5 to say?

6 MR. BECK: I want to refresh his
7 recollection about what he told --

8 THE COURT: What do you want him to say?

9 MR. BECK: I want him to say that yes, I
10 have to speak into the microphone.

11 MS. TORRACO: But the witness is looking
12 at you.

13 MR. BECK: I want him to say that he said
14 it was approximately 11:00, 11:06 when he went out,
15 and that he went out because I think the impression
16 it was the first time he'd ever said that he went
17 out because Amber called him. And in that recording
18 at five minutes, he says to the police officer, I
19 have 11:00, 11:06, because Amber called him.

20 THE COURT: Do you have a transcript of
21 this?

22 MR. BECK: I don't recollect. I just have
23 a recording.

24 THE COURT: Let me excuse the jury. I
25 don't think I want them to hear it without him

1 having his memory refreshed, so I'll ask the jury to
2 step out.

3 MR. BECK: Sure.

4 (The following proceedings were held in
5 open court.)

6 THE COURT: All right. We're going to
7 take a short break we'll be in recess for just a few
8 minutes.

9 (The jury left the courtroom.)

10 THE COURT: All right. Everyone be
11 seated. All right, Mr. Beck?

12 MR. BECK: Do you have the recording
13 ready?

14 BY MR. BECK:

15 Q. So Mr. Sutton, we're going to play for you
16 a portion of the recorded phone call from November
17 13, 2012.

18 (Tape played):

19 BY MR. BECK:

20 Q. Mr. Sutton, does that refresh your
21 recollection about both what time you saw the
22 Gallegos brothers, and about what you told the
23 police about your sister calling you?

24 THE COURT: Mr. Benjamin?

25 MR. BENJAMIN: Your Honor, I was just

1 waiting for time to address the Court.

2 BY MR. BECK:

3 Q. Does that refresh your recollection about
4 those two things?

5 A. Yes.

6 THE COURT: Do you have an objection?

7 MR. BENJAMIN: Yes, Your Honor. The
8 question was, "Did you tell him that you were out
9 looking for Adrian Burns based on what your sister
10 told you, right?" And then the question is -- I'm
11 looking at 423, Your Honor, in the afternoon.
12 The -- and then the Government followed up with its
13 question that it's been asking all along. Do you
14 remember exactly, which is an attempt to bolster the
15 witness' testimony when he has said that he
16 remembers, and he answered the question in the
17 affirmative.

18 MR. BECK: Your Honor, I think that it
19 goes to the fairness of what the jury is hearing,
20 because he was impeached by something not being in a
21 report, but he said it. And so I wanted to refresh
22 his recollection about exactly what he told police.
23 He said he didn't remember, so properly refreshed,
24 so now he can tell the jury.

25 THE COURT: But what is the statement that

1 he's saying that you're trying to impeach? The
2 question was: "Did you also tell that New Mexico
3 State Police Officer -- and I think you were asked
4 this by Mr. Benjamin just now -- on November 13, did
5 you tell him that you went out looking for Adrian
6 Burns based on what your sister told you?"

7 And he said, "Right."

8 So I'm not sure there is really anything
9 to impeach. So I agree with Mr. Benjamin. So how
10 do you wish to proceed?

11 MR. BECK: I can proceed and ask him.

12 THE COURT: Let me bring the jury back in.

13 MR. BECK: Sure.

14 THE COURT: You get him in a situation
15 where he needs to have his memory refreshed, you can
16 do it, but I'm not sure that statement does it.

17 All rise.

18 (The jury entered the courtroom.)

19 THE COURT: All right. Everyone be
20 seated. Mr. Sutton, I'll remind you that you're
21 still under oath.

22 Mr. Beck?

23 BY MR. BECK:

24 Q. So Mr. Sutton, did listening to that
25 recording of your November 13, interview help

1 refresh your recollection about what time you saw
2 the Gallegos brothers at the Allsup's?

3 A. Yes, it did.

4 Q. And about what time was that?

5 A. About like I said on there, 11:30 or so.

6 Q. All right. And I'm going to approach you
7 with the State Police report that Mr. Benjamin
8 showed you, on page 3434.

9 So on page 3434, is that a transcript of
10 the recording, or is that a summary of the
11 conversation you had with the State Police?

12 A. It's a summary of what I had with the
13 State Police.

14 Q. I think Mr. Benjamin went over this with
15 you, does it say in there that you told them you
16 went out looking for Adrian, based on your
17 conversation with Amber?

18 A. No, it does not.

19 Q. And when you listened to the recording
20 just now, did you say that to police?

21 MR. BENJAMIN: Objection, Your Honor,
22 that's outside the purview of the jury and it's not
23 admitted.

24 THE COURT: Well, if he's now listened to
25 it, he can answer that question.

1 BY MR. BECK:

2 Q. So my question was, when you listened to
3 the recording of your interview just now, did you
4 say that to police?

5 A. Yes.

6 Q. I'm sorry, state one more time.

7 A. Yes.

8 MR. BECK: No further questions, Your
9 Honor.

10 THE COURT: Thank you Mr. Beck.

11 All right, Mr. Sutton, you may step down.
12 Is there any reason that Mr. Sutton cannot be
13 excused from the proceedings?

14 MR. BECK: No, Your Honor.

15 THE COURT: Any defendant object?

16 MR. BENJAMIN: No, Your Honor.

17 THE COURT: Not hearing or seeing any, you
18 are excused from the proceedings. Thank you for
19 your testimony.

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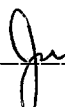
1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

3
4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages
8 constitute a true transcript of proceedings had
9 before the said Court, held in the District of New
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 20th day of November, 2018.

13
14 
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